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PTO/SB/21 (6-99)

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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number

09/904,766

Filing Date

JULY 12, 2001

First Named Inventor

AVI ASHKENAZI

Group/Art Unit

1644

Examiner Name

ROARK, JESSICA

Total Number of Pages in This Submission

4

Attorney Docket Number

39780-1618 P2C33

## ENCLOSURES (check all that apply)

☐ Fee Transmittal Form

☐ Fee Attached

☒ **AMENDMENT / RESPONSE  
(SUPPLEMENTAL PRELIMINARY  
AMENDMENT)**

☐ After Final

☐ Version With Markings Showing  
Changes

☐ Affidavits/declaration(s)

☐ Extension of Time Request

☐ Information Disclosure Statement

☐ Certified Copy of Priority Document(s)

☐ Response to Missing Parts/ Incomplete  
Application

☐ Response to Missing  
Parts under 37 CFR  
1.52 or 1.53

☐ Copy of Notice

☐ Copy of an Assignment

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition Routing Slip (PTO/SB/69)  
and Accompanying Petition

☐ Petition to Convert to a  
Provisional Application

☐ Power of Attorney, by Assignee to  
Exclusion of Inventor Under 37 C.F.R.  
§3.71 With Revocation of Prior Powers

☐ Terminal Disclaimer

☐ Small Entity Statement

☐ Request for Refund

☐ After Allowance Communication to  
Group

☐ Appeal Communication to Board of  
Appeals and Interferences

☐ Appeal Communication to Group  
(Appeal Notice, Brief, Reply Brief)

☐ Proprietary Information

☐ Status Letter

☐ Additional Enclosure(s)  
(please identify below):

☒ **STAMPED RETURN POSTCARD**

Remarks

**AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT 08-1641 FOR ANY FEES DUE IN  
CONNECTION WITH THIS PAPER, REFERENCING ATTORNEY'S DOCKET NO. 39780-1618  
P2C33.**

## SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or  
Individual name

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*Leslie Mooi*

Date

**October 23, 2003**

Customer Number:

**25213**

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Express Mail Label **EL 976 543 179 US**

Typed or printed name

**C. FONG**

Signature

*C. Fong*

Date

**October 23, 2003**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	Examiner: Roark, Jessica H.
	)	
Avi ASHKENAZI, et al.	)	Art Unit: 1644
	)	
Application Serial No. 09/904,766	)	Attorney's Docket No. 39780-1618 P2C33
	)	
Filed: July 12, 2001	)	<b>Customer No. 35489</b>
	)	
For: <b>PRO269 POLYPEPTIDES</b>	)	

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SUPPLEMENTAL PRELIMINARY AMENDMENT

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**Mail Stop Non-Fee Amendment**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

This preliminary amendment is supplemental to the amendment filed  
October 17, 2003. Please consider the following arguments.

### **Priority**

In their Preliminary Response Applicants provided reasons why the effective filing date of this application is February 11, 2000. The claims pending are fully entitled to claim priority to International Application PCT/US00/03565 filed February 11, 2000.

### **Claim Rejections - 35 USC § 102**

1. Claims 39-46 and 49-51 stand rejected under 35 USC 102(b) or in the alternative under 35 USC 102(a) as being anticipated by Wood et al. (WO99/14328). This rejection is traversed for the following reasons.

When discussing this rejection in the preliminary response, Applicants incorrectly indicated the wrong effective filing date. In fact, Applicants are asserting that the claims pending in this application are entitled to the effective filing date of February 11, 2000. Wood et al., was published less than one year prior to the effective filing date of the present application. Accordingly, Wood et al is not a 35 USC 102(b) prior art reference.

Applicant's disclosure of their own work within the year before the filing date of a patent application cannot be used against Applicants. Accordingly Wood et al. is not a 35 USC 102(a) prior art reference.

2. Claim 39-46 and 49-51 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Valenzuela et al. (WO00/11015) (published March 2, 2000) which allegedly teaches a protein that is at least 100% identical to SEQ ID NO:96.

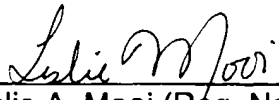
Applicants, in discussing this rejection in the preliminary amendment, incorrectly indicated the wrong effective filing date. The claims pending in this application are entitled to the effective filing date of February 11, 2000. The cited primary reference Valenzuela et al. has a publication date of 3/2/2000 which is after the effective filing date (2/11/2000) of the present application. Hence, Valenzuela is not prior art under 102(b), and does not anticipate the present claims. Withdrawal of the rejection is respectfully requested.

The present application is believed to be in *prima facie* condition for allowance, and an early action to that effect is respectfully solicited.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. **08-1641** (Attorney's Docket No. **39780-1618 P2C33**). Please direct any calls in connection with this application to the undersigned at the number provided below.

Respectfully submitted,

Date: October 23, 2003

By:   
Leslie A. Mooi (Reg. No. 37,047)

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